IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 7352 of 1998
WITH
FIRST APPEAL NO. 5767 OF 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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OIL & NATURAL GAS CORPORATION LTD. - Appellant(s)
Versus
RELIANCE CELLULOSE PRODUCTS LTD - Defendant(s)
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Appearance :
M/S TRIVEDI & GUPTA for Appellant(s) : 1,
MR SN SOPARKAR, SENIOR ADVOCATE WITH MR AMAR N BHATT for Defendant(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/08/2006

ORAL JUDGMENT

1. By way of First Appeal No. 7352, the appellant-original defendant-Oil & Natural Gas Corporation(hereinafter referred to as 'ONGC') has challenged the judgement and award dated 30.07.98 passed by the Second Joint Civil Court (S.D), Vadodara in Arbitration Misc. Application No. 70 of 1994 whereby the Civil Court allowed the application of the respondent-original applicants and awarded

interest at the rate of 10% P.A. from the date when price for each installment of supply became due to R.C.P.L to the date of award and on the principal amounts at 18% per annum from the date of award to the date of payment or the date of the decree in terms of the award whichever is earlier.

2. First Appeal no. 5767 is filed by Reliance Cellulose Products Limited (hereinafter referred to as 'RCPL') against the award dated 30.07.98 to the extent that the awarded interest is only at the rate of 10% per annum.

3. The brief facts of the case are that on 08.7.88 the present appellant had invited tenders for purchasing 1944 MT of CMC against which the present respondent submitted tender for 1200 MT of CMC on 01.08.88. All the duly received tenders were opened in the presence of the bidders on the stipulated date of opening i.e 05.08.88.

3.1 On 16/17.09.88, the appellant requested the respondent to confirm the validity of the offer until

05.12.88 and also requested to furnish Income Tax Clearance Certificate and to remove technical deficiencies and to convey confirmation of the mandatory clause No. 16 which was duly submitted on 20.09.88 with the clarification that the validity of the offer was up to 05.12.88.

3.2 Thereafter on 03.10.88, RCPL submitted revised price on the ground of price hike in material and unilaterally conveyed that the revised price superseded the earlier one but the same was returned by ONGC unopened on 13.10.88 as the revised bid was not as per tender condition with a clarification that only the original bids will be opened on 19.10.88.

3.3 On 19.10.88 the original bids of all successful bidders including of RCPL were opened in the presence of bidders. On 01.12.88 ONGC placed the supply/purchase order for 1200 MT at the rate quoted in the original bid dated 01.08.88 at Rs. 14,999/- MT i.e for the total quantity quoted by RCPL and at the price quoted by RCPL.

3.4 On being asked by ONGC to submit the security deposit, RCPL on 15.12.88 addressed a letter welcoming the purchase/supply order and conveyed that it was arranging for bank guarantee which was submitted on 21/23.01.89 on the basis of the rate/price quoted in the tender of 01.08.88.

3.5 On the basis of the same, a formal order containing the delivery schedule and the terms of contract was issued by ONGC on 15.02.89. The said order was received by RCPL on 24.02.89 and started supplying the material as per the contract. Thereafter, various correspondence and meetings took place between RCPL and ONGC for discussing the issues regarding repeat order clause, set off clause, delivery clause, arbitration clause etc. however, on 17.01.90, ONGC placed repeat order for 600 MT of CMC at Rs. 14,999/- which was disputed by RCPL.

3.6 After, various correspondence regarding repeat order, RCPL filed Civil Suit in Secunderabad against invocation of bank guarantee as per ONGC's letter to Andhra Bank on which status quo was ordered.

Thereafter, RCPL filed petition no. 7457 of 1990 before this Court wherein this Court passed an order requiring the parties to prefer the matter for arbitration. The Court in July 1998 passed a decree modifying the decree to the extent that the rate of interest came to be reduced from 18% to 10%. ONGC therefore filed the present appeal. The original claimant also filed First Appeal No. 5767 of 1998 praying for enhancement of interest from 10% to 18%.

4. Learned counsel for the appellant has contended that the lower Court has not dealt with the issue regarding jurisdiction of the lower Court. He has further contended that the award is wrong and contrary to the provisions of the Interest Act in awarding the interest from the due date of delivery/invoices though there was no debt since the payment of invoices were made and there was no due or debt and the higher price beyond the price in contract was fixed.

4.1 Mr Thakar has placed reliance on a decision of the Apex Court in the case of State of Rajasthan v.

M/s Nav Bharat Construction Co. reported in AIR 2005 SC 4430 wherein the Apex Court while setting aside the award and appointing an Arbitrator has observed in para 23 and 26 read as under:

> “23. There can be no dispute to the well established principle set out in these cases. However, these cases do not detract from the law laid down in Bharat Coking Coal Ltd's case or Continental Construction Co. Ltd's case (supra). An arbitration cannot go beyond the terms of the contract between the parties. In the guise of doing justice he cannot award contrary to the terms of the contract. If he does so he will have misconducted himself. Of course if an interpretation of a term of the contract is involved then the interpretation of the arbitrator must be accepted unless it is one which could not be reasonably possible. However, where the term of the contract is clear and unambiguous the arbitrator cannot ignore it.
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> 26. It prima facie appears that the majority of the claims are against the terms of the Contract. However, there are also other claims which are not against the terms of the Contract. To merely set aside the Award on ground of misconduct would work hardship on the Respondent as they would then be deprived of claims which may be maintainable. In our view the correct course would be to set aside the award and refer the matter back to an independent Umpire appointed by this Court. The Umpire will fix his own terms and conditions. We however clarify that only those claims covered by the two applications will be considered. Of course the Umpire will decide how many of the 39 claims formed part of the claims made in the two applciations. Needless to state that the terms of the

> contract will be kept in mind and claims contrary to terms of the contract will undoubtedly not be allowed. The Umpire will also decide whether the Respondent had agreed to do the contracted work done during the extended period at the same rates and/or whether the Respondent is entitled to increased rates and if so at what rate. The Umpire shall decide only on the basis of the materials already placed before the earlier Arbitrators and the earlier Umpire."

5. Learned counsel for the respondent has contended that the Arbitrators had jurisdiction to determine the price in view of the order of this Court dated 11.10.90 passed in Special Civil Application No. 7457 of 1990 in which the Court had observed as under:

> "Only dispute which now survives with respect to this repeat order is at the price at which the said quantity is to be supplied to the respondents. As stated earlier, the other dispute is with respect to the price for CMC which was already supplied earlier. Both these disputes can well be referred to the Arbitration as the contract between the parties contemplates referring such disputes for arbitration".

He has further contended that the trial court ought to have awarded interest at the rate of 18% per annum from the date of award till the date of payment.

5.1 Learned counsel for the respondent has also

submitted that the Court cannot re-appreciate the evidence and in this regard has placed reliance on the decision of the Apex Court in the case of Bhagwati Oxygen Ltd. V Hindustan Copper Ltd reported in 2005(6) SCC 462 wherein the scope of challenge to the award under Section 30 read with Section 33 of the Arbitration Act, 1940 is discussed.

5.2 He has further submitted that the prices at which the supplies were billed and the payment was made by ONGC was only a tentative price and the final price was to be fixed by the Arbitrators. He has also submitted that once the final price is fixed by the Arbitrators, the price is applicable from the dates of the supplies and not from the date the final prices were fixed.

6. Heard learned counsel for the parties and gone through the award of the Tribunal. As a result of hearing and perusal of records, it is clear that the scope of challenge to the award under Section 30 read with Section 33 of the Arbitration Act, 1940 is very limited. In the case of Bhagwati Oxygen(supra), para

24 reads as under:

> "Section 30 of the Act enumerates grounds for setting aside an award passed by the arbitrator. It reads thus:
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> 30. Grounds for setting aside award.- An award shall not be set aside except on one or more of the following grounds, namely-
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> (a) that an arbitrator or umpire has misconducted himself or the proceedings;
> (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35;
> (c) that an award has been improperly procured or is otherwise invalid."

25. This Court has considered the provisions of Section 30 of the Act in several cases and has held that the court while exercising the power under Section 30, cannot re-appreciate the evidence or examine the correctness of the conclusions arrived at by the arbitrator. The jurisdiction is not appellate in nature and an award passed by the arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, another view is equally possible. It is only when the court is satisfied that the arbitrator had misconducted himself or the proceedings or the award had been improperly procured or is "otherwise" invalid that the court may set aside such award.

> "26. In the leading decision of *Hodgkinson v. Fernie, Williams, J*. stated : (ER p. 717)
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> The law has for many years been settled, and remains so at this day, that,

> where a cause or matters in difference are referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final judge of all questions both of law and of fact. Many cases have fully established that position, where awards have been attempted to be set aside on the ground of the admission of an incompetent witness or the rejection of a competent one. The court has invariably met those applications by saying, *'You have constituted your own tribunal; you are bound by its decision.'*"

6.1 In view of the decision of the Apex Court in the case of Bhagwati Oxygen(supra), I am of the opinion that the scope to challenge the award is very limited. Apart from that the order referring the matter to the arbitrator is not challenged by the appellant-ONGC and the contention which are raised before the Civil Court seems to be an afterthought as they were not raised at the first instance. In that view of the matter, the contention of the appellant-ONGC cannot be accepted and the appeal is required to be dismissed.

6.2 Moreover, on consideration of the evidence on record, the DRD contract was subject to the Arbitration clause and looking to the price fluctuations, I am of the view that the Arbitrators

were justified in awarding the amount.

7. As far as the prayer in First Appeal 5767 regarding increasing the rate of interest to 18% is concerned, I am of the view that looking to the fact that the original respondent ONGC is a public sector undertaking, granting of higher interest would unnecessarily prove to be a burden on the exchequer of such public body. The rate of interest awarded by the trial court seems to be just and proper and therefore the appeal deserves to be dismissed. In view of the above, both the appeals are dismissed accordingly without any order as to costs.

(K.S. JHAVERI, J.)

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